

Attorney Docket No. 0198.00

**REMARKS**

Reconsideration of the present case in view of the above amendments and the remarks herein is respectfully requested.

**Allowable Claims**

Applicant acknowledges the Examiner's indication that claims 5-8 are allowable if the rejection under 35 USC § 112 is overcome, and if the allowable claims are rewritten in Independent form. Independent claim 1 has accordingly been amended to include the limitations of claim 5, which is hereby cancelled. Claims 6 and 7 have also been amended to correct dependency and/or improve clarity. Claims 2-4 and 6-13 are dependent upon allowable claim 1 thus are allowable as well.

By this Amendment, claims 24, 28 and 30 are cancelled without waiver, prejudice or estoppel. Applicant therefore requests entry of the amendments and allowance of pending claims 1-4, 9 and 11-18.

**Claim rejections under 35 USC §112**

Claims 1-9 and 11-18 were rejected under 35 U.S.C. §112 as not having an antecedent basis for the term "receptacle." Claims 1 and 14 have been amended to recite "capsule" in place of "receptacle," in the last line of each claim, thus relating back to the first occurrence of the term.

**Claim rejections under 35 USC §102**

Claims 1-4, 9 and 11-18 were rejected under 35 U.S.C. §102 (b) as allegedly anticipated by *Haber et al.*, US 5,287,850.

With respect to the rejection of claims 1-4, 9 and 11-13, the amendment to claim 1 comprising incorporating the subject matter of claim 5 obviates the 35 U.S.C. §102 (b) rejection as to claim 1 and its dependent claims, as previously determined by the Examiner.

Additionally, with regard to all pending claims, applicant contends that *Haber et al.* can not anticipate the claims as amended because *Haber et al.* is limited to an aerosolization device which requires a source of aerosolization energy, other than that supplied by the user's breathing. *Haber et al.* thus describes a device which uses a pressurized chamber to aerosolize and expel the formulation therein. See at least Column 3, lines 31-48 and Column 5, lines 31-39:

The user then pulls on pull knob 28 to pull plunger 18 to the position of FIG. 3C allowing air to enter cylinder 20 as indicated in FIG. 3C. Plunger 18 is then returned to the position of FIG. 3D and is locked into place by rotating plunger 18 so that the end 146 of a guide rib 148 is no longer aligned with slot 150, but abuts against shoulder 56 as shown in FIG. 3D. This creates a volume of pressurized air in hollow interior 26.

*Haber et al.*, Column 5, lines 31-39.

Applicants have amended Independent claim 14 to clarify that aerosolization energy is supplied by the user's breathing, not by mechanical energy of compression. For this reason alone, *Haber et al.* cannot be applied in support of a rejection under 102. Moreover, applicants respectfully disagree with the Examiner's characterization of *Haber et al.* as purporting to teach applicant's claimed elements of a shield covering the air inlet openings. Element 18 (cited by the Examiner as forming part of the "shield") is a plunger for pressurizing the chamber, providing the source of aerosolization energy:

Pressurization chamber 6 includes a plunger 18 which reciprocates within a cylinder 20 defined by the pressurization end 22 of body 10. Plunger 18 includes an elongate stem 24 having a hollow interior 26 and a pull knob 28 secured to one end by a screw 30

*Haber et al.*, Column 3, lines 31-36.

Even if either element 18 (or another element) acts to shield an air inlet (and applicants find no such express teaching) it would be solely for the purpose of sealing the pressurization chamber to permit pressurization, and not to shield an **aerosolization air inlet** from inadvertent blockage by the user. See, for example, claim 1:

...an activating mechanism having an open position and a closed position and being operably positioned along the air flow path, the activating mechanism fluidly isolating the pressurization and inhalation chambers along the air flow path when in the closed position and fluidly coupling the

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pressurization and inhalation chambers when in the open position.

With respect to the rejection of individual elements claimed in the dependent claims, as the independent claims are allowable over the prior art of record, then their dependent claims are allowable as a matter of law, because these dependent claims contain all features/elements/steps of their respective independent claim. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for the allowability of independent claims 1 and 14, the dependent claims recite further features/steps and/or combinations of features/steps (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

Claim 24, 28 and 30 were rejected under 35 U.S.C. §102 (b) as allegedly anticipated by *Valentini et al.*, US 4,995, 385. Applicant has cancelled these claims, rendering moot the rejection of these claims.

### Conclusion

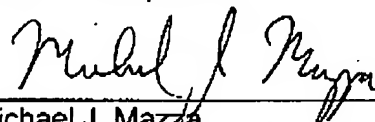
The claims are allowable for the reasons given above, and an allowance is respectfully requested. Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 50-0348.

If a telephone conference would expedite the allowance of this application, the Examiner is requested to call the undersigned at (650) 283-6790.

Respectfully submitted,  
Nektar Therapeutics

Date: 3/12/08

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